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CONTEMPORARY FORMS OF SLAVERY

Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography

Report of the Working Group on Contemporary Forms of Slavery pursuant to paragraph 6 of Sub-Commission resolution 1992/2

Addendum

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ARGENTINA

[Original: Spanish]
[17 March 1993]

1. At the appropriate time and at the highest legal and legislative level, through the technical and administrative body subordinate to and within the competence of the Ministry of Health and Social Affairs and through its intervention, notification was given of the reservation to article 21, subparagraphs (b), (c), (d) and (e), of the Convention on the Rights of the Child, which was adopted by the General Assembly of the United Nations on 20 November 1989 and is in the process of being ratified by the Government of the Argentine Nation, regarding prevention of the sale of and trafficking in children, and the promotion of adoption through the Intercountry Adoption Institute. It should be emphasized that the Congress of the Argentine Nation endorsed the reservations and the aforesaid Convention was ratified by Act No. 23,849. Under article 2 of this Act the Argentine Republic has entered a reservation to article 21, subparagraphs (b), (c), (d) and (e), of the Convention on the Rights of the Child and stated that they shall not apply within its jurisdiction because, in its view, before they can be applied, a strict mechanism must exist for the legal protection of children in matters of intercountry adoption, in order to prevent trafficking in and the sale of children.

2. At the same time, it should be pointed out that Decree No. 1606 of 22 August 1990, which set up the National Council for Children and the Family, entrusts to it the functions incumbent upon the State in the area of the promotion and comprehensive protection of children and the family, including those relating to the sale of children, child prostitution and child pornography. In this connection, specific activities are undertaken by the Ministry of Justice, the Ministry of the Interior, the Ministry of Education and Culture and the judiciary, within their specific spheres of competence. The following provisions of Decree No. 1606/90 are particularly relevant:

> Article 2. "The functions and duties of the National Council for Children and the family shall be: (a) Planning, organizing and implementing the policy of comprehensive promotion of children and the family within the framework of the provisions in force and the principles established by the Ministry of Health and Social Affairs; (b) Taking the necessary measures to contribute to the strengthening of the family, by providing it with guidance and support; (e) Coordinating the participation of local bodies and public welfare bodies in general in the planning, implementation and propagation of local and regional programmes for the guidance and comprehensive promotion of the family and all its members; (g) Promoting the development of research and training in the area of children and the family."
>
> Article 14. "(a) Substantive matters: I. Prenatal, perinatal and postnatal period. It shall give comprehensive attention to the personal, family and social problems of the mother and the unborn child. In particular, it shall promote any activities intended to protect the unmarried mother as a prime risk indicator in the life of the child, and

especially under-age mothers and needy families. II. Prevention and treatment of abandonment. It shall deal, through public or private services or programmes, with the problems of the formation and strengthening of the bond between mother, father and child, so as to reinforce the family nucleus, the fundamental unit of society. If abandonment cannot be avoided, it shall implement all the programmes designed to provide the child with a substitute family environment. In particular, it shall coordinate care systems in the workplace."

3. Since the sale of children, child prostitution and child pornography are encouraged and promoted by abandonment, lack of protection and interacting risks, we should also draw attention to such programmes of effective action as the Programme for the Prevention of Abandonment and the Protection of Mothers at Risk (Order No. 178/91 of the National Council for Children and the Family).

1. General objective: To implement a broad system of prevention of abandonment and protection for minors exposed to physical, psychological or moral risk identified in public or private hospitals, priority being given to adolescent unmarried mothers as the prime risk indicators in the life of the child.

2. Specific objectives: To deal with children at risk in hospitals, clinics, maternity centres, etc. To provide support to the family and/or group in which the pregnant mother lives in order to collaborate appropriately in maintaining, emotionally, economically and socially, the mother/child relationship within and outside the health care centre. To identify in hospitals, maternity centres and clinics the population at risk of premature breakdown of the mother-father-child relationship and to assist it, with the resources of the organization or other institutions, in order to prevent such breakdown. To prevent the worsening of the situation of children at risk in hospital centres (drug addiction, ill-treatment, delinquency, broken homes, etc.). To recognize, prevent, alleviate and, where possible, overcome the causes of physical and mental ill-treatment of children resulting from anomalous intra-family relations. To provide comprehensive care for the population most vulnerable to the risk of infant abandonment, and especially under-age pregnant mothers in a conflict situation, thereby protecting the maternal relationship and avoiding the surrender of the child. To provide the mother promptly with information on her rights concerning the recognition, possession and maintenance of her child, while at the same time ensuring proper professional care. To provide psycho-social care in cases where normal family relations have broken down, subsidizing treatment where necessary. to channel the appropriate institutional resources to families with malnourished young children. To provide timely and appropriate training for hospital and health-centre staff in the risks entailed by the breakdown of the mother-father-child relationship. To advise social and medical-care teams on all matters relating to the protection of the mother-child relationship. To promote the development of the individual potential of unmarried mothers by subsidizing and arranging work in an environment that preserves her physical and emotional integrity. To facilitate admission to governmental and non-governmental aid centres for unmarried mothers when

particular circumstances so require. To promote the setting-up of, admission to, and residence in, small homes or self-managed hostels for unmarried mothers, while helping them to overcome the conflicts which resulted in their admission. To motivate mothers to take care of their health and that of the child by strictly carrying out the medical recommendations and especially by attending to the early stimulation of the baby.

4. Through these objectives, the aim is to neutralize, as far as possible, since action must be coordinated at the interagency and community levels, the unlawful activities of those persons and national and international CAFTEN organizations which violate the essential human rights of children. The hardships and risks to which the family unit and its weakest and most helpless members are exposed lead to the serious situations described in the report of the Working Group on Contemporary Forms of Slavery, referred to in resolution 1992/2 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

BOLIVIA

[Original: Spanish]
[1 March 1993]

THE NATIONAL BOARD OF SOLIDARITY AND SOCIAL DEVELOPMENT

1. The measures adopted with respect to the prevention of child pornography are set forth specifically in article 117 (4) and article 118 (1) and (2) of the new Juvenile Code, which stipulate:

Article 117 (Maltreatment)

"A juvenile shall be considered to have been a victim of maltreatment if he has suffered damage to his physical, mental or emotional health or to his well-being through actions or omissions on the part of his parents, other persons or institutions.

Such actions or omissions include:

...

4. Exploitation or permitting the exploitation by others of juveniles for lucrative purposes, such as begging, exposure in pornographic photographs or films, prostitution or other activities which endanger their physical, mental and/or moral integrity."

Article 118 (Obligation to report)

"Cases of maltreatment of juveniles shall be reported to the Juvenile Court or to the National Council for Juveniles, Women and Families, which shall submit the case to the said Court within 48 hours.

1. Anyone who in the exercise of his activities or profession and/or in the course of his daily life learns of or suspects the existence of cases of maltreatment of juveniles shall report such cases to the National Council.

2. Any professional and/or employee shall report cases of maltreatment of juveniles. He shall not invoke professional or official secrecy or protect himself behind orders of any nature from his superiors.

The persons referred to in this article who report cases of maltreatment or submit claims relating to such cases shall be exempted from any criminal or civil responsibility in respect of the information they provide, except in cases of bad faith.

3. The coroners and the doctors of the National Council shall evaluate each case, taking account of the age of the juvenile in question and the gravity of the physical and psychological damage, and shall establish the time at which the particular impediment to his activities was inflicted."

Article 119 (Obligations of institutions and professionals)

"Organizations for the protection of juveniles as well as professionals and institutions in the field of health shall protect and look after any juvenile who is threatened with renewed maltreatment."

2. Another priority measure to be adopted is the broad dissemination of the Code through the media and by other means in order to permit its implementation.

Sexual exploitation and sexual abuse

3. Both of these crimes are dealt with in articles 308, 312, 313 and 321 of the Criminal Code, which contain sanctions up to a maximum of 6 to 10 years imprisonment for the crimes of rape, indecent assault, kidnapping, corruption of juveniles and procuring.

4. Despite these legal provisions, the whole problem of the sexual exploitation and sexual abuse of juveniles has increased considerably, as is apparent from the increase in the number of cases of rape and other sexual offences reported to the regional juvenile offices.

5. With regard to sexual exploitation, the regional juvenile offices and the juvenile courts deal with specific cases that come to their knowledge, assuming responsibility for the protection of juveniles and referring those responsible for these offences to the ordinary courts.

The sale of children

6. The sale of children does not exist as a legal offence in our legislation. In practice, however, it is recognized by some organs of the press in statements to the effect that "sale" takes place very surreptitiously through the handing over of juveniles to foreign couples. None the less, such news items have not been supported by formal complaints that would permit

intervention by legally competent institutions. The only case brought to the attention of the authorities led to the immediate intervention of the National Council, as a result of which the guilty parties were condemned to penal servitude. Also involved was the Committee for the Fight against Impunity, together with various institutions working with children and juveniles under the chairmanship of the legal department of the National Council. This Committee follows up reports and punishment of crimes against juveniles.

7. Another control mechanism is the required authorization for travel abroad. The new legislation regulates such travel as follows:

Article 169 (Authorization for travel abroad)

"Authorization by the National Council is required for travel abroad except when the juvenile is accompanied by both parents. For the juvenile to travel with only one of the parents, express authorization by the other parent is required in the form of a document authenticated by the juvenile court."

Article 171 (Judicial authorization)

"No juvenile born in Bolivian territory shall leave the country in the company of a foreigner residing abroad without the express authorization of the judicial authorities and without the knowledge of the National Council."

Article 172 (Coordination)

"The National Council shall coordinate its activities with the Ministry of the Interior, Migration and Justice in order to ensure that the exit of juveniles from the country takes place in conformity with the relevant regulations."

Article 173 (Non-observance)

"The non-observance by natural or judicial persons of preventive legislation shall be regarded as a misdemeanour or a violation of the law."

CHILE

[Original: Spanish]
[9 November 1992]

1. There are currently no specific programmes of action in the justice sector bearing directly on any of the above topics.

2. The National Youth Service is, however, carrying out programmes for young people in need of assistance and protection as a result of the material and moral danger they face. These take the form of placement in Protective Homes or in families, where the children stay until a solution is found to the problem which originally necessitated such action.

3. Furthermore, the Service is funding special assistance projects, including "Street children", "Children struggling to survive" and "Young offenders". Planning is also under way for a "Prevention of child prostitution" project, to be operated in the Metropolitan Region.

4. As regards programmes for the prevention of the sale of children, the Service has made arrangements for the direct administration of baby observation and diagnosis centres and has set up adoption units in the Metropolitan Region and Region VIII with a view to exercising control over any possible irregularities in the adoption process, preventing any sale of children by placing them in adoptive families.

A draft bill amending the current Adoption Act has been prepared with the same objective, by which it is hoped to eliminate any risk of the sale of or trafficking in children.

LIBYAN ARAB JAMAHIRIYA

[Original: Arabic]
[1 February 1993]

1. The Libyan Penal Code prohibits dealing and trafficking in slaves, as well as enslavement of any form. Article 425 of the Penal Code stipulates that:

> "Any person who enslaves an individual or who places him in circumstances resembling slavery shall receive a prison sentence of five to ten years."
>
> Article 426 of the Code stipulates that:
>
> "Any person who deals or traffics in slaves or who in any manner disposes of an individual who is in a state of slavery shall receive a prison sentence not exceeding ten years.
>
> "A prison sentence of three to twelve years shall be the penalty for any person who disposes of an individual who is enslaved or who is in circumstances resembling slavery, or who surrenders, procures or acquires such individual or maintains him in such circumstances. The provisions of this section shall apply if the act is perpetrated abroad against a Libyan."

2. Libyan legislation also criminalizes child prostitution; article 415 stipulates that:

> "Any person who lures a minor or a mentally deficient person into prostitution for the purpose of satisfying the carnal appetite of others or who facilitates the same shall be detained for not less than one year and receive a fine of not more than £200.
>
> "The penalty shall be doubled in the following instances:
>
> (a) If the act is perpetrated against a person under the age of 14;

(b) If the perpetrator is the kin of the injured party or the kin of his spouse, or if he is his adoptive father, spouse, brother, sister or guardian;

(c) If the perpetrator was entrusted with the discipline of the injured party, or with his education, supervision, care, employment or training."

Article 416 stipulates that:

"Any person who uses force or violence to coerce a minor or an adult woman into prostitution for the purpose of satisfying the carnal appetite of others shall receive a prison sentence of three to six years and a fine of between £150 and £500.

"The penalty shall be doubled in the instances stipulated inparagraph (b) of the preceding article or if the act is carried out against a married woman."

PANAMA

[Original: Spanish]
[9 November 1992]

The Constitution of the Republic of Panama contains the following provisions:

Article 216

"Anyone who has carnal knowledge of a person of either sex shall be liable to a penalty of three to six years in prison in the following cases:

1. If violence is used;

2. If the victim is deprived of his reason or senses, or if he or she is unable to resist as a result of physical or mental illness or any other reason;

3. If the victim is detained or imprisoned and has been entrusted to the offender for supervision or for transfer from one place or another."

Article 217

"Anyone who has carnal knowledge of a person of either sex who has not reached the age of 12, even in the absence of any of the circumstances referred to in the preceding article, shall be liable to a penalty of four to eight years in prison."

Article 226

"Anyone who has knowledge of or facilitates the corruption of a person aged between 12 and 15 and commits an indecent act with or

persuades him or her to commit or witness such an act shall be liable to a penalty of six months to one year in prison."

Article 227

"In the cases covered by the preceding article, the penalty shall be from one to five years in prison in the following cases:

1. If the victim is aged under 12;"

Article 228

"Anyone who, for profit or to satisfy the wishes of another person, promotes or facilitates the prostitution of persons of either sex shall be liable to a penalty of two to four years in prison."

Article 229

"The penalty for the above offence shall be from three to five years in prison in the following circumstances:

1. If the victim is a girl aged under 12 or a boy aged under 14;"

Article 230

"Anyone who is kept, even only partially, by a person engaged in prostitution and who benefits from the earnings from that activity shall be liable to a penalty of one to two years in prison or commitment to a farm or labour camp for a period equivalent to the maximum penalty applicable."

Article 231

"Anyone who promotes or facilitates the entry into or exit from the country of a person for the purpose of prostitution shall be liable to a penalty of two to four years in prison. The penalty shall be increased to six years in prison in any of the circumstances listed in article 227."

SPAIN

[Original: Spanish]
[5 February 1993]

Child Prostitution

In Spain, the corruption of minors is punished under the provisions of articles 452 bis, b:

"Short-term imprisonment in the medium or maximum degree, general disqualification for those who are officials or agents of a public authority and specific disqualification for those who are not, and a fine of from 100,000 to 500,000 pesetas shall be the penalties incurred:

1. By whoever promotes, encourages or facilitates the prostitution or corruption of a person less that 18 years of age;

2. Whoever in order to satisfy the sexual desires of a third party provides the facilities for or exercises any kind of inducement upon persons less than 18 years of age, even where there is consent;

3. Whoever by means of promises or agreements, even with a semblance of legality, leads into prostitution or causes the prostitution of persons less than 18 years of age, whether on Spanish territory or in order to take them abroad for the same purpose.

4. Whoever, for any reason or under any pretext, aids or abets the continuation in corruption or the stay of persons less than 18 years of age in brothels or places of ill repute."

And 452 bis, e of the Penal Code, which states:

"Anyone with authority over a minor who, being aware that the latter is engaged in prostitution, is being corrupted or is living in or frequenting brothels and places of ill repute, does not remove him to prevent him from continuing to lead such a life and does not take him into his care or place him at the disposal of the authorities, if he is himself unable to look after him, shall be liable to brief imprisonment.

"A similar penalty shall be imposed on anyone who, in the cases mentioned in the preceding paragraph, shall commit the offences sanctioned therein, even if he does not have legal authority over the minor, if at the time the latter was led astray he had him in his home and in his care or exercised over him, de facto, family or ethical and social authority."

SAINT VINCENT AND THE GRENADINES

[Original: English]
[23 April 1993]

1. There is no evidence, material or otherwise, that would suggest that child prostitution and child pornography as well as the sale of children have ever existed or exist in Saint Vincent and the Grenadines.

2. No specific measures have been adopted to implement the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography as contained in the annex to Commission on Human Rights resolution 1992/74 of 5 March 1992. However, the protection of minors where it relates to sexual offences being committed against such persons, is guaranteed under provisions of the Criminal Code of Saint Vincent and the Grenadines (chap. VIII, sect. 124-130).